

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FIRST TRADE UNION BANK,	:	
	:	
Plaintiff,	:	<u>ORDER</u>
	:	10-CV-5284 (WFK) (RML)
-against-	:	
	:	
FORMERLY 8TH STREET LLC, <i>et al.</i> ,	:	
	:	
Defendants.	:	
-----X	:	

WILLIAM, F. KUNTZ, II, United States District Judge

Plaintiff First Trade Union Bank commenced this foreclosure action by the filing of a complaint on November 16, 2010. Dkt. 1 (“Complaint”). On March 6, 2012, the Court entered a Judgement of Foreclosure and Sale. Dkt. 37 (“Judgment”). On May 9, 2012, the Court granted the motion to substitute B Jefferson LLC as party plaintiff in place of First Trade Union Bank. Dkt. 43 (“Order Granting Motion to Substitute”). By letter dated November 12, 2014, B Jefferson LLC informed the Court that it no longer desired to continue with the prosecution of this action and planned to seek a dismissal in accordance with the Federal Rules of Civil Procedure. Dkt. 47 (“Letter to Dismiss”). No dismissal was ever filed.

On May 1, 2015, Magistrate Judge Robert M. Levy issued an Order to Show Cause directing B Jefferson LLC to seek dismissal of the case pursuant to the Federal Rules of Civil Procedure on or before May 15, 2014 or else to show cause why this action should not be dismissed for failure to prosecute. *See* Dkt. entry of 05/01/2015 (Order to Show Cause). No action was taken by B Jefferson LLC in response to the Order to Show Cause.

On July 1, 2015, Magistrate Judge Levy filed a Report and Recommendation recommending “this case be dismissed for lack of prosecution.” Dkt. 48 (“R&R”) at 1. The Report and Recommendation recounted the prosecution history in this action and documented the measures taken by the Court to provide every opportunity to B Jefferson LLC to continue this action despite its written desire to dismiss the action. *See* Letter to Dismiss. Objections to the Report and Recommendation were required to be filed within fourteen days of the filing date of the Report and Recommendation. *See* R&R at 2; Fed. R. Civ. P. 72(b)(2). No objections were filed.

DISCUSSION

In reviewing a Report and Recommendation, the court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). When no objections have been filed, a district court reviews a Report and Recommendation for clear error. *See Zeitone v. Korsinsky & Klein, LLP*, 13-CV-383, 2013 WL 5937397, at *1 (E.D.N.Y. Nov. 4, 2013) (Kuntz, J.) (citing *Reyes v. Mantello*, 00-CV-8936, 2003 WL 76997, at *1 (S.D.N.Y. Jan. 9, 2003) (Cote, J.)); *Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007) (Garaufis, J.).

“Rule 41(b) of the Federal Rules of Civil Procedure authorizes the district court to dismiss an action if the plaintiff fails to prosecute[.]” *Baptiste v. Sommers*, 768 F.3d 212, 216 (2d Cir. 2014). This is the “harshest of sanctions,” and it “must be proceeded by particular procedural prerequisites[.]” including “notice of the sanctionable conduct, the standard by which it will be assessed, and an opportunity to be heard[.]” *Mitchell v. Lyons Profl Servs., Inc.*, 708 F.3d 463, 467 (2d Cir. 2013). The Second Circuit has outlined five factors to be considered when determining whether to dismiss a case. *See Lucas v. Miles*, 84 F.3d 532, 535 (2d Cir.

1996). The factors are: “(1) the duration of the plaintiff’s failure to comply with the court order, (2) whether plaintiff was on notice that failure to comply would result in dismissal, (3) whether the defendants are likely to be prejudiced by further delay in the proceedings, (4) a balancing of the court’s interest in managing its docket with the plaintiff’s interest in receiving a fair chance to be heard, and (5) whether . . . a sanction less dramatic than dismissal” would be appropriate. *Id.* (internal citations omitted).


No party has filed objections to the Report and Recommendation in this action. The Court finds that there was no clear error in the Report and Recommendation’s determination to dismiss the action for lack of prosecution as all of the aforementioned factors and principles weigh in favor of dismissal. The Court therefore adopts Magistrate Judge Levy’s Report and Recommendation in its entirety.

CONCLUSION

For the foregoing reasons, this Court adopts Magistrate Judge Levy’s Report and Recommendation in its entirety. Accordingly, it is hereby ordered that this case be dismissed for lack of prosecution. The Clerk of Court is directed to close the case.

SO ORDERED

s/WFK


HON. WILLIAM F. KUNTZ, II
United States District Judge

Dated: July 29, 2015
Brooklyn, New York